

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL NO. 00-66-2
 :
VINCENT LEWIS :

MEMORANDUM ORDER

Defendant was charged with aiding and abetting the distribution of crack cocaine, doing so within one thousand feet of a public housing project and conspiring to distribute crack cocaine. Defendant entered a guilty plea pursuant to a written signed agreement with the government and is awaiting sentencing next month.¹

Defendant has filed a motion to withdraw his plea. He asserts that he is not guilty of the offenses charged and pled guilty because of the advice of his counsel that "there was no way he would be acquitted of the charges because the government had either manufactured or produced overwhelmingly incriminating evidence." He asserts that his plea was not knowing and voluntary because he was not advised that with two prior drug convictions, he would be deemed a career offender and his base offense level would increase to 37, or that he faced a minimum

¹ The court deferred sentencing proceedings until the Probation Office was able to complete the presentence reports for all defendants to ensure it had available the most comprehensive and accurate information regarding the scope of the conspiracy and the role in the offense of each defendant. The final PSR was submitted on April 11, 2002.

penalty of twenty years imprisonment. Defendant has also submitted three letters he received from counsel which he suggests show that his attorney placed the government's interests ahead of defendant's.

The "withdrawal of a guilty plea is inherently in derogation of the public interest in finality and the orderly administration of justice," U.S. v. Horne, 987 F.2d 833, 837 (D.C. Cir. 1993). The burden is on a defendant who seeks to withdraw a guilty plea to establish that it is fair and just to permit him to do so. See U.S. v. Brown, 250 F.3d 811, 815 (3d Cir. 2001); U.S. v. Huff, 873 F.2d 709, 712 (3d Cir. 1989).

In assessing such a motion, courts examine the strength of the reasons asserted by a defendant for withdrawal, any assertion of innocence and whether the government would be prejudiced by a withdrawal. See Brown, 250 F.3d at 815; U.S. v. Martinez, 785 F.2d 111, 113 (3d Cir. 1986). Any assertion of innocence must be credible. See U.S. v. Gonzales, 970 F.2d 1095, 1100 (2d Cir. 1992); Gov't of Virgin Islands v. Berry, 631 F.2d 214, 220 (3d Cir. 1980). A change of mind or the fear of punishment are not adequate reasons for withdrawal of a guilty plea. See U.S. v. Jones, 979 F.2d 317, 318 (3d Cir. 1992). While prejudice to the government may always be considered, the absence of prejudice is not material where a defendant fails to establish sufficient grounds for permitting withdrawal of his

plea. See U.S. v. Gonzalez, 970 F.2d 1095, 1100 (2d Cir. 1992); Martinez, 785 F.2d at 116.

The plea agreement specifies that the defendant understands, agrees and has had explained to him by counsel that he faced a maximum sentence of life imprisonment and a mandatory minimum term of twenty years imprisonment, as well as ten years to life on supervised release, a \$28,000,000 fine and a \$400 special assessment. Defendant acknowledged that no one had promised him what sentence he would ultimately receive.

The plea agreement specified that the "defendant understands and has had explained to him by counsel that if the United States Probation Officer determines that he has at least two prior felony convictions for either a crime of violence or a controlled substance offense, he will be considered a career offender under U.S.S.G. § 4B1.1" and "his offense level will be 37 and his criminal history category will be VI resulting in a sentencing range of 360 months to life imprisonment." The agreement specified that defendant had fully discussed its contents with his lawyer, that he is in fact guilty and that there were no promises, understandings or conditions other than those set forth in the plea agreement.

At his plea colloquy, defendant stated that he understood his answers to the court's questions were under oath and subject to the penalties of perjury if not truthful. The

court explained to defendant that he faced a minimum of twenty years and a maximum of life imprisonment. The court reviewed the plea agreement with defendant including the provision that he would be sentenced as a career offender in a sentencing range of 360 months to life imprisonment if it were determined that he had two prior felony convictions for crimes of violence or controlled substance offenses.² Defendant affirmed his understanding of the sentence he faced and stated under oath that no one had made any other assurances to him.

The court will not accept a guilty plea from a defendant who does not appear from the evidence to be guilty or who does not unequivocally acknowledge his guilt. The government summarized its case against defendant and the court directly questioned him regarding his guilt.

Among other evidence, the government was prepared to present the testimony of undercover police officers who purchased crack cocaine from co-defendant Eugene Waddy in defendant's presence at a prearranged meeting in the motel room where defendant resided. The government was prepared to present the testimony of a cooperating individual that defendant had earlier quoted him a price for a quantity of crack cocaine and told him

² Defendant had two prior drug convictions for which he was sentenced to terms of imprisonment and of which he was presumably aware at the time of his plea. He also had a conviction for assault and resisting arrest.

that co-defendant Mark Heard would make delivery at a specified place and time. Mr. Heard appeared and effected delivery of the crack cocaine as specified. Mr. Heard has since pled guilty and agreed to testify for the government. The government had evidence that on another occasion defendant arranged for a person who asked to buy crack to meet with co-defendant Waddy who supplied the requested amount.

Defendant acknowledged under oath that he was knowingly involved in arranging the purchases from Mr. Waddy and Mr. Heard. Defendant responded "yes sir" when the court asked if he was aware on each of these occasions that the transactions he arranged or facilitated involved crack cocaine.

A defendant's "declarations in open court carry a strong presumption of verity." Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). See also Gonzales, 970 F.2d at 1100 (claim of innocence contradicted by unequivocal statements at plea proceeding not credible); U.S. v. Rogers, 848 F.2d 166, 168 (11th Cir. 1988) (defendant bears "heavy burden" to show statements made under oath at plea colloquy were false); U.S. v. McKoy, 645 F.2d 1037, 1039 (D.C. Cir. 1981) (defendant must tenably account for about-face on acknowledgment of guilt or guilty pleas would be reversible at whim of defendant).

Defendant states he pled guilty because his attorney advised that the government had overwhelming evidence against

him. Counsel's advice and defendant's reason were sound.³ Defendant's conclusory assertion that he is innocent is contradicted by the evidence as well as his prior sworn statements and is not credible. Defendant's assertion that he was unaware of the sentence he faced is flatly contradicted by his plea agreement and colloquy. The three letters from defense counsel submitted by defendant do not remotely show that counsel placed the government's interests ahead of his client's.

In the first letter, counsel informed defendant that he was having three incriminating audio tapes and one video tape copied and hoped to have defendant brought to Philadelphia the following week to listen to the audio tapes and view the video tape. Counsel also noted that this would be an opportune time to talk to the federal agents. In attempting to schedule a meeting at which defendant could personally review discovery material and then try to obtain a departure motion, counsel was proceeding in defendant's best interests. In the second letter, defense counsel explained that he could not negotiate a specific sentence with the prosecutor and that ultimately the "sentence is up to the judge." Nothing therein suggests that counsel was subordinating his client's interests to those of the government.

³ The evidence against defendant was overwhelming and with his acknowledgment of guilt he qualified for a two offense level reduction for acceptance of responsibility that would have reduced his minimum sentencing exposure by almost six years which, with his current disclaimer of guilt, is now in jeopardy.

In the third letter, counsel suggested that defendant should tell him if he had useful information to give and he would arrange for a meeting of the two of them, the prosecutor and case agent. That counsel continued to pursue the possibility of qualifying defendant for a departure motion was consistent with his interests.

Counsel provided Mr. Lewis with effective and faithful representation. He filed appropriate pre-trial motions, obtained and reviewed pertinent discovery material, soundly advised his client to plead guilty in view of the evidence against him and pursued the possibility of qualifying defendant for a departure motion. There is no showing that counsel put any interests of the government ahead of those of his client.

Defendant has not established that it would be fair and just to allow him to withdraw his plea.

ACCORDINGLY, this day of April, 2002, upon consideration of defendant's Motion to Withdraw Guilty Plea (Doc. #116), **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.